SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 1079

GROVER G. ALEXANDER, Petitioner

vs.

CERELES SHARPE, Respondent

STATE OF MAINE, Respondent

vs.

GROVER G. ALEXANDER, Petitioner

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME JUDICIAL COURT OF MAINE

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vs.
CHARLES SHARPE, Respondent

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PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME JUDICIAL COURT OF MAINE

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The Petitioner, Grover G. Alexander, respectfully prays that a writ of Certiorari issue to review the Judgment and opinion of the Supreme Judicial Court of Maine entered in this proceeding on October 20, 1969.

OPINION BELOW

The Opinion of the Supreme Judicial Court of Maine, not yet reported, appears in the Appendix hereto.

JURISDICTION

The Judgment of the Supreme Judicial Court of Maine was entered on October 20, 1969. No petition for re-hearing was filed in that the Maine Rules of Civil Procedure and/or Maine Rules of Criminal Procedure do not provide for a petition for re-hearing as such. This Petition for a Writ of Certiorari was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. Whether Petitioner has been deprived of DUE PROCESS of law as guaranteed by the FIFTH (5th), SIXTH (6th) and FOURTEENTH (14th) AMENDMENTS and ARTICLE III, Paragraph 2 of the Constitution of the United States.

2. Whether Petitioner has been deprived of trial by Jury as guaranteed by ARTICLE III, Paragraph 2 and by the SIXTH (6th) and FOURTEENTH (14th) AMENDMENTS to the Constitution of the United States.

3. Whether Petitioner has been deprived of his right against self-incrimination as guaranteed by the FIFTH (5th) AMENDMENT of the Constitution of the United States.

4. Whether Petitioner's right against twice being put in jeopardy for the same offense as guaranteed by the FIFTH (5th) AMENDMENT to the Constitution of the United States has been violated.

5. Whether the burden of proof against the Petitioner, that of guilt beyond a reasonable doubt, has been met on the record presented in satisfaction of due process as aforesaid.

6. Whether the constitutional rights of the Petitioner have been satisfied with respect to applicable State laws and the interpretation thereof as guaranteed by the FOURTEENTH (14th) AMENDMENT to the Constitution of the United States.

7. Whether the Petitioner's right against excessive fine and punishment has been violated as guaranteed by the EIGHTH (8th) AMENDMENT to the Constitution of the United States.

STATUTORY PROVISIONS INVOLVED

I MAINE REVISED STATUTES, 1964, VOLUME 8, TITLE 14, which is RULE 42 (a) and (b) of the Maine Rules of Criminal Procedure:

"(a) Summary Disposition. A criminal contempt may be punished summarily if the justice sertifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the justice and entered of record.

(b) Disposition upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the prepara-

tion of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the justice in open court in the presence of the person charged or, on application of an attorney for the state or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The person charged is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a justice, that justice is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

II ARTICLE III, Paragraph 2 of the Constitution of the United States:

" The trial of all crimes, except in cases of impeachment, shall be by Jury...."

III SIXTH (6th) AMENDMENT of the Constitution of the United States:

" In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and district wherein the crime shall have been committed...."

IV FOURTEENTH (14th) AMENDMENT, Section #1, of the Constitution of the United States:

" No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law...."

V FIFTH (5th) AMENDMENT of the Constitution of the United States:

".... Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law...."

VI ARTICLE I, Section 6(a) of the Constitution of Maine:

" No person shall be deprived of life, liberty or property without due process of law...."

VII ARTICLE I, Section 6 of the Constitution of Maine:

" In all criminal prosecutions, the accused shall have a right....:

To demand the nature and cause of the accusation against him; and have a copy thereof;

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a Jury of vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land."

VIII. MAINE REVISED STATUTES, 1964 TITLE 4, Section 114:
"The Superior Court may....; punish for contempt; ...."

IX EIGHTH (8th) AMENDMENT of the Constitution of the United States:
"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

X ARTICLE I, Section 9 of the Constitution of Maine:
"Sanguinary laws shall not be passed: all penalties and punishments shall be proportioned to the offence: excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

XI ARTICLE I, Section 8, Constitution of the State of Maine:
"No person, for the same offence, shall be twice put in jeopardy of life or limb."

STATEMENT OF THE CASE

On July 6, 1967, during the trial of a personal injury suit, the Petitioner, in the presence of the Jury, stated to the Justice...."I think it demonstrates your prejudice without doubt." The remark followed almost immediately an exchange between Court and Counsel wherein the Court shouted at Petitioner, accused him of being incompetent, and otherwise caused the Petitioner great embarrassment in the presence of the Jury. The exchange began after an incorrect

ruling by the Court adverse to the Petitioner relating to the re-direct examination of a State Police Officer. The sequence of events appears at RECORD-DOCUMENT #3, pages 151-152.

Unfortunately, the precise language of the Court and Petitioner was not recorded by the Reporter. The Reporter's note...."(Court and Counsel for Plaintiff speaking at the same time.)"....is found at RECORD-DOCUMENT #3, page 151. However, the Court apologized to the Jury, and stated in part...."I also wish to apologize on behalf of myself to the extent that I permitted my voice to be raised, and perhaps said something that shouldn't be said in this courtroom." This acknowledgment and apology is setforth at RECORD-DOCUMENT #3, page 159. The Petitioner made a similar apology to the Jury which appears at RECORD-DOCUMENT #3, pages 165-166.

The incident occured;and Court was thereafter adjourned at 4:55 P.M. RECORD-DOCUMENT #3, page 152.

The following morning, July 7, 1967, at 10:00 A.M., the Court convened the Jury. After making the apology indicated above, the Justice turned to the Petitioner and proceeded to summarily hold him in contempt of Court. The Court's remarks to the Petitioner, in the presence of the Jury, are found at RECORD-DOCUMENT #3, pages 162-165. The court ordered Petitioner to pay a Fine of $500 and to be imprisoned in the County Jail for a period of 5 days.

Immediately before the sentence was imposed, Petitioner interrupted the Justice and asked to be heard. The Justice replied...."You may not." No Certificate setting forth the acts of contemptuous conduct was filed. The Petitioner was placed in the custody of the Sheriff based upon the oral order as setforth on RECORD-DOCUMENT #3, page 166.

Petitioner requested and was granted a chamber conference before being committed to the County Jail. At the chamber conference Petitioner asked to be purged of the 5 days confinement. The Court replied: RECORD-DOCUMENT #3, pages 167-168.

"MR. ALEXANDER: Judge, I openly ask you if there is any way I can perhaps purge myself of this confinement? It obviously will work its hardship in terms of, you know, my practice and that sort of thing.

THE COURT: I'm afraid not, Grover. I am not very proud of myself for what I have done and it's the most difficult

this is the only way I could bring to your attention what I think you have done. We have had some experience before but I have never had occasion to get upset. But I'm not the only one, and without attempting to justify anything I just say to you that your reputation with all of the judges, or most of the judges in this particular area makes this no particular surprise. I mean, I think you have had it coming.

MR. ALEXANDER: You really do.

THE COURT: If you didn't have it coming I wouldn't have done it to you."

At 5:00 P.M. on July 7, 1967, Petitioner filed a Petition for Writ of Habeas Corpus and was admitted to liberty on his personal recognizance. A hearing was scheduled on the Writ for 9:30 A.M. July 20, 1967. The Court filed a formal Order of Commitment on July 11, 1967. This Order of Commitment appears on RECORD-DOCUMENT #1, page 38.

The hearing on the Habeas Corpus Petition was held and the transcript of the evidence and testimony is contained in RECORD-DOCUMENT #2. The Writ was denied. Petitioner appealed. This proceeding was docketed as Civil Action Docket #67-670 and Law Court Docket #326. The Supreme Judicial Court declared the conduct of the Petitioner to be...."clearly an act of contempt of Court." However, because the offended Justice had not to that point filed a formal Certificate setting forth the contemptuous conduct as required by Maine Rules of Criminal Procedure, Rule 42 (a), the Law Court sustained Petitioner's Appeal and ordered that the case be remanded to the offended Justice for the filing of the required Certificate and re-sentencing of the Petitioner. This Opinion appears at RECORD-DOCUMENT #1, pages 21-37, and APPENDIX #1.

Pursuant to the Opinion of August 15, 1968, the re-sentencing was held on August 29, 1969. At 10:54 A.M. on that date, Petitioner was presented for the first time the Certificate of Contempt. The Certificate bore the date of August 29, 1968 and was filed at 10:54 A.M. on that date. The Certificate of Contempt appears at RECORD-DOCUMENT #1, pages 19-20. It contained an allegation that...."Petitioner belligerantly shook his finger at the Court while continuing to address the Court, refusing to heed the Court's admonition." In addition, the Certificate alleged that Petitioner had been rude and disrespectful in manner and tone of voice. Petitioner denies such conduct. There is nothing in the record to support such allegation.

Petitioner filed an Appeal from the new judgment of contempt to the Supreme Court. He also filed Motions for a new trial and for acquittal. The Motion for a new trial was filed and sought so as to permit Petitioner to present evidence to refute the Allegation of finger-pointing and rude and disrespectful tone and manner. Petitioner objected; but the same offended Justice heard the Motions and denied both on the ground that such Motions were not seasonably filed. The Motion for acquittal assigned severalviolations of Petitioner's constitutional rights. The Motions appear at RECORD_ DOCUMENT #6, pages A-30 through A-33. The hearing on the Motions appears at Record_Document #6, pages 21-26.

The new Appeal was docketed as criminal action Docket # 9117½ andLaw Court Docket # 356. The matter was argued at the June, 1969 Term of Court. The opinion was rendered on October 20, 1969. The Appeal was denied. The opinion appears at RECORD-DOCUMENT #1, pages 5-16 and APPENDIX #2. Petitioner was granted a Stay of Execution of Sentence and Judgment. He has entered this Petition for Writ of Certiorari in this Honorable Court.

Finally, in this connection, Petitioner states that his seeming acknowledgment of the contempt occurred before the Presiding Justice made the declaration in the chamber conference relating to the reputation of the Petitioner found in RECORD-DOCUMENT #3, pages 167-168. It was at that point, or shortly thereafter, that Petitioner decided to challenge the proceedings. Petitioner acknowledges and regrets the reference to the prejudice of the Justice. Petitioner denies the rude and disrespectful conduct and finger-pointing. Petitioner was at all times pointing and refering to the chalk board about which the State Police Officer was testifying when the incident occurred.

REASONS FOR GRANTING WRIT

I The Supreme Judicial Court of Maine in this instance has decided the substantial federal questions involved here in a way probably not in accord with applicable decisions of the Supreme Court of the United States:

A. DUE PROCESS: The offended Justice in this instance took no action against the Petitioner until the following morning after the alleged contempt. He did not file

the jurisdictional requirement, e.g., the Certificate of Contempt, for a period of 13 months and 22 days. The necessity of immediate and prompt action, the only tolerable basis summary contempt proceedings, was lost; and the Petitioner was then entitled to trial on Notice and by indictment or presentment of the specific charge against him. EX PARTE TERRY, 128, U.S., 289. The Maine Supreme Judicial Court did not defeat the jurisdiction of the presiding Justice to try and punish summarily; and that Petitioner's right of due process had not been violated. The alleged contemptuous conduct involved a criticism of and an accusation of prejudice on the part of the presiding Justice. Under these circumstances, due process seems to require that the matter be tried and determined by a Justice other than the offended one. COOKE vs.UNITED STATES, 267 U.S.,517 at 539 and U.S. vs.BRADT, 294 Fed. 2nd, 879 and SACHER vs. UNITED STATES, 343 U.S.1 at page 8 and OFFUT vs. UNITED STATES, 348 U.S. 11 at page 14. The Maine Supreme Judicial Court held that Petitioner's right of due process had not been violated by the fact that the offended Justice tried and determined the matter summarily at all stages of the proceedings.

B. PRESUMPTION OF INNOCENCE; BURDEN OF PROOF and SELF-INCRIMINATION:

In criminal contempt proceedings, all the usual safeguards of criminal procedure and substance apply. That is, the accused is presumed innocent; he must be proven guilty beyond a reasonable doubt; and he may not be compelled to testify against himself. GOMPERS vs. BUCKS STOVE CO., 221 U.S. 418 at page 444. 31 SUPREME COURT 492 at 499. The Maine S Supreme Judicial Court inferred guilt of the Petitioner as well as the basis of the contempt charge in its Opinion of August 15, 1968 without the required Certificate of Contempt having then been filed in the case for their consideration. Moreover, the Court apparently considered the remarks of the Petitioner after the alleged contempt, both in Court and in chambers, as evidence of guilt. The Opinion of October 20, 1969 affirmed the finding of guilt in the Opinion ofAugust 15, 1968 without re-examination of the facts.which is an extension of the violation of the rights of the Petitioner, respecting the presumption of innocence, burden of proof and self-incrimination. The Maine

October 20, 1969, that with respect to criminal contempt .... " it seems clear that not all the procedural rules relating to the ordinary criminal offenses are applicable...."

The Supreme Judicial Court of Maine in this instance has decided substantial federal questions not heretofore determinedby the Supreme Court of the United States:

A. TRIAL BY JURY: The Maine Constitution provides that in all criminal prosecutions the accused shall have a right to trial by jury of the vicinity. ARTicle I, Section 6. The Statutes conferring the contempt jurisdiction of the Superior Court, MAINE RULES OF CRIMINAL PROCEDURE, Rule 42 (a) and (b) and MAINE REVISED STATUTES, 1964, Title 4, Section 114, do not set a Maximum or Minimum penalty. Therefore, the absence of a specific designation of contempt as a "petty" offense, together with the open-ended authority to punish and the specific constitutional provision of jury trial in all criminal prosecutions, would seem to create in the Petitioner a right to trial by jury in this instance. The present case is distinguished from that of DUNCAN vs. LOUISIANA, 88 S. Ct. 1444; BLOOM vs. ILLINOIS, 88 S. Ct.1477 and CHEFF vs. SCHNACKENBERG, 86 S. Ct. 1523. The Maine Court held that Petitioner was not entitled to trial by Jury.

B. FORMER JEOPARDY: Under the circumstances of this case, the sustaining of the Appeal of August 15, 1968 would be an effective constitutional bar to the subsequent trial and re-sentence of August29, 1968 which resulted in the Opinion of October 20, 1969. The filing of the required Certificate of Contempt is both jurisdictional and substantial as compared to form or procedure. Therefore, the Court, not having complied with the necessity of filing the Certificate, and the subsequent sustaining of Petitioner's Appeal on that ground , seems to constitute former jeopardy. The matter is distinguished from that of a reversal on grounds of error in the admissability of evidence, etc. which results in the granting of a new trial. The Maine Court held that the sustaining of the Appeal of August 15, 1968 did not constitute former jeopardy.

C. EXCESSIVE FINE AND PUNISHMENT: In this instance, the punishment imposed is disproportionate to the alleged offence. Therefore the penalty violates Petitioner's rights protected by the EIGHTH (8th) AMENDMENT to the Constitution of the United States against excessive fines and cruel and unusual punishments. The Maine Court held the penalty to be proper.

III The Petitioner is not guilty of a contempt on the Record presented:

A. SUFFICIENCY OF EVIDENCE: The evidence against the Petitioner is inadequate to support a judgment of contempt.

B. AGGRESSIVE ADVOCACY: Under the particular circumstances of the case, the remark of the Petitioner relating to the prejudice of the Presiding Justice is excusable. Under the pressures of a hectic jury trial an aggressive advocate may " lose his h head" and say things not entirely proper, but also not consciously contemptuous. The public interest is best served by an independent bench and bar.

POINTS AT WHICH FEDERAL QUESTIONS WERE RAISED AND RULINGS THEREON

The federal questions presented here for consideration of this Court were raised at two points in the Courts of first instance.

In the Habeas Corpus proceeding, Case # 326, the points were raised by argument and trial brief. Also the points were raised in the Designation and Amended Designation of Points on Appeal which appears at RECORD-DOCUMENT # 4, pages

The trial Court rejected the arguments thereon. The Supreme Judicial Court concurred in the due process requirement of the filing of the Certificate of Contempt and sustained the Appeal. This is contained in the Opinion dated August 15, 1968 and is APPENDIX # 1.

After the re-sentencing on August 29, 1968, Petitioner filed Motion for New Trial and Judgment of Acquittal assigning the federal questions as the basis therefor. The

offended Justice dismissed both Motions. The Motions and ruling thereon appear at RECORD-DOCUMENT # 6, Pages 21 through 26.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Supreme Judicial Court of Maine.

Respectfully submitted,

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January 12, 1970

Date Opinion Filed
August 15, 1968

Reporter of Decisions
Docket No. 427
Law Docket No. 326

GROVER G. ALEXANDER

vs

CHARLES SHARPE, SHERIFF

WEATHERBEE, J.

On appeal from the dismissal of the writ of habeas corpus.

On July 6, 1967, the petitioner, an attorney-at-law, was acting as attorney for the plaintiff in the trial of a civil action for negligence before a jury in the Cumberland County Superior Court. At about 4:45 P.M. on that afternoon, the second day of the trial, the petitioner responded to a ruling of the Presiding Justice with the words "I think it demonstrates your prejudice without doubt." These words, addressed to the Justice, were spoken during trial and in the presence of the jury. The Justice answered that the matter would be discussed in chambers, adjourned court until morning without further comment, and left the building. The following morning he discussed the matter in chambers with counsel and granted petitioner's request that a mistrial be ordered in the case, and then, in the courtroom, adjudged the petitioner to have been in contempt and sentenced the petitioner to serve five days in the county jail and to pay a fine of five hundred dollars.

The petitioner took no appeal from the judgment of contempt against him but requested that execution of the sentence should be delayed until five o'clock that afternoon because of reasons concerning his family. The Justice

granted his request. At five o'clock the petitioner surrendered himself to the Sheriff and, at the same time, filed a petition for the writ of habeas corpus. The writ issued and hearing was had before a Justice of this Court. The writ was ordered dismissed, petitioner furnished bail, and the matter comes before us on petitioner's appeal from the dismissal of the writ of habeas corpus.

Until the adoption of our Maine Rules of Criminal Procedure in 1965, neither our statutes nor our rules provided for appeal from judgments for contempt. Review by habeas corpus has been accepted, there having been no other method available and, in Stern v. Chandler, 153 Me. 62, 134 A. 2d 550 (1957), this remedy was expanded to include review of the facts as well as of jurisdiction and form of commitment. M. R. Crim. P., Rule 37 now provides that whenever a judgment of the Superior Court is by law reviewable by the Law Court, review shall be by appeal. Appeal, and not habeas corpus, is now the appropriate method for review of Superior Court judgments for criminal contempt. Glassman, Maine Practice, 42.5. As the petitioner here took no appeal from the judgment of contempt against him, the matter is not properly before us. However, as this case is the first of its kind to reach this Court since the adoption of the new Rules we have treated the matter as though the correct procedure had been followed.

Petitioner designated some twenty-five points to be relied upon on appeal. Our disposition of the matter will make discussion of most of them unnecessary.

JURISDICTION

Petitioner contends that while the Court had undisputed jurisdiction over the subject matter and over his person, it lost this jurisdiction when it failed to take action against petitioner until the morning following the incident in question.

It has long been recognized that the power of a court to punish summarily for a contempt committed in the presence of the Court is inherent in the nature and constitution of a court and necessary for the court to possess in the exercise of all its other powers. Ex Parte Terry, 128 U.S. 289 (1888). Authority for the exercise of this power by the Superior Court is also found in 4 M. R. S. A., Section 114, and in M. R. Crim. P. Rule 42 (a) but this statute and rule only restate what substantially has been the common law.

Unquestionably the alleged contempt here was of the type classified as a criminal contempt, as distinguished from a civil contempt. Godard v. Babson-Dow Mfg. Co., 319 Mass. 345, 65 N. E. 2d 555 (1946). This Court has long recognized this distinction and has said that this class of contempts should be punished "summarily" (Androspoggin R. R. Co., 49 Me. 392 at 400 (1862)) and "by immediate punishment". (Stern, supra p. 68, 134 A. 2d 553, quoting Ex Parte Terry, supra.)

We do not view the use of the words "summarily" and "immediate" as precluding the Justice's use of reasonable time for deliberation and consideration before he takes such severe action. Summary action, as used in reference to criminal contempt, means without the necessity of notice and hearing

committed in the immediate view or presence of the Court. M. R. Crim. P. Rule 42 (b).

> "We think delay was not only proper, but laudable on the part of the trial judge. The word 'summarily' in the rule does not require a hasty determination." In re Osborne, 344 F. 2d 611 (1965).

The record shows that the Justice was greatly disturbed by the petitioner's conduct and its possible effect upon the trial of the case. The delay over night while the Justice reflected upon the matter and determined what course of action the circumstances required him to take was proper and commendable and the Court lost jurisdiction over neither the cause nor the petitioner by its deliberate action. People v. De Stefano, 64 Ill. App. 2d 368, 212 N. E. 2d 368 (1965); Hallinen v. United States, C. A. Cal. 182 F. 2d 880 (1950); United States v. Galante, 298 Fed. 2d 72, 100 A. L. R. 2d 431 (1962); Sacher v. United States, 343 U. S. 1, 72 S. Ct. 451, 96 L. Ed. 717 (1952).

DUE PROCESS - SUFFICIENCY OF FACTS

The petitioner contends that the facts disclosed by the record are not sufficient to constitute a contempt.

Petitioner's client, the plaintiff in the case of Doughty v. Anderson, sought recovery for personal injuries. Early in the testimony of plaintiff's first witness on the morning of July 6th, the Presiding Justice, on objection by defense counsel, ruled that he would exclude any testimony relating to

memorandum, prepared by counsel, had contained no claim by plaintiff for permanent impairment. The Court and counsel then went into chambers where the petitioner vigorously opposed the Justice's ruling and under the Court's direction a record of the parties' positions was carefully prepared for their use if the issue should be raised upon appeal.

Following this, the Court offered the petitioner an opportunity to discontinue the trial and amend the pre-trial order to permit the disputed issue to be considered at a later trial. Petitioner declined this offer.

If the petitioner believed that the Justice's ruling was in error (and we do not suggest that it was in error,) it was still his ethical duty as an officer of the Court to abide by the ruling during the trial and then, if the jury verdict required it, to exercise his well protected right to review the issue on appeal. No other conduct is consistent with fair and orderly trial procedure and with respect for the rights of the opposing party. Instead, petitioner persisted in a line of questioning designed to establish in the jurors' minds the impression that plaintiff had suffered permanent impairment. Several rulings adverse to petitioner resulted. Finally, after a ruling adverse to petitioner on another issue the petitioner announced that he would now take advantage of the offer to discontinue the trial which the Justice had made that morning. The Justice refused to allow petitioner that earlier declined privilege and the petitioner, in the presence of the jury, accused the Justice of prejudice.

Petitioner's accusation of prejudice was clearly an act of contempt of court. Its immediate and obvious results were to disrupt the trial, to

dispassionate determination of the issues before them, and to deprive both plaintiff and defendant of an early resolution of their litigation. A more extended harm to be expected from such an accusation on the part of an officer of the court is a lessening of public respect for the bench, the bar and the judicial process.

The decree of the Justice below dismissing the writ of habeas corpus fairly and succinctly described the necessity of respect for the Court on the part of counsel.

> "A Judge is a representative of the judicial system and as such must be accorded, while functioning in a courtroom, the respect which his position demands. The responsibility of a properly conducted case rests on the shoulders of the Judge who has the duty of so conducting the trial of the controversy that the solemnity and decorum of a courtroom is maintained at its highest level. Party litigants are entitled to a well ordered trial of their causes, the public expect it and they are entitled to it. Trials are open to the public and what transpires in the courtroom is of public notice and concern. The jury, counsel, litigants, witnesses, court officers, representatives of the press and spectators are all observers of courtroom proceedings. They hear and see trial action and carry a message to the public as to what might be expected by any litigant who seeks judgment in a court of law. The message they carry is dependent upon a Judge's supervision in conducting a trial and counsel's conduct including his respect for and civility to a Court. A member of the legal profession, above all others, should be sensitive to the respect a Judge is entitled to while performing his duties in a court of law and conducting himself accordingly."

Petitioner asks us, in his brief,

> "What is an attorney to do under trial conditions when he is confronted with a series of what he believes to be erroneous and prejudicial rulings from the Court?"

The United States Supreme Court has answered this question in

Sacher v. United States, supra at p. 343 U. S. 9, 96 L. Ed. 723.

cited by petitioner, saying that if the Court's ruling is adverse,

> ". . . [I]t is not counsel's right to resist it or to insult the judge — his right is only respectfully to preserve his point for appeal."

RIGHT TO JURY TRIAL

Following publication of the decisions of the United States Supreme Court in Duncan v. Louisiana, _____U.S._____, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968), and Bloom v. Illinois, _____U.S._____, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968), which were decided on May 20, 1968, petitioner was given leave to add to his Points on Appeal the contention that it was his constitutional right to have the issue of his contempt determined by jury trial.

Although the Court later in De Stefano v. Woods, _____U.S._____, 88 S. Ct._____, 20 L. Ed. 2d 1308 (1968) held that the constitutional principles announced in Duncan and Bloom were not applicable to trials commenced before May 20, 1968, thus excluding petitioner's conviction from their holdings, we have considered the effect of Duncan and Bloom upon contempt convictions in Maine courts.

The inherent authority of the Court to protect its decorum and integrity by punishing for all contempts without trial by jury has always been accepted in this State. Until recently this view prevailed in the federal system also.

> "It has always been the law of the land, both state and federal, that the courts — except where specifically precluded by statute — have the power to proceed summarily in contempt matters." United States v. Barnett, 376 U.S. 681, at 692,

In 1966 in Cheff v. Schnackenberg, 384 U.S. 373, 86 S. Ct. 1523, 16 L. Ed. 2d 629 (1966), the Court found constitutionally permissible a summary conviction for contempt without jury trial in a federal court in which a sentence of six months was imposed, finding this to be a "petty" offense. Under federal statutes and decisions misdemeanors, the penalties for which do not exceed six months, are petty offenses and do not require jury trials. The Court, in the exercise of its supervisory power, then ruled that in federal courts sentences exceeding six months in length may not be imposed for criminal contempt, without jury trial or waiver.

Duncan and Bloom do not support the petitioner's position here. In Duncan the Court held that the Fourteenth Amendment guarantees the right of jury trial in all state cases in which, if they were tried in a federal court, jury trials would be required by the Sixth Amendment. The Court observed that under Louisiana statutes simple battery is punishable by imprisonment up to two years and is thus not a petty offense but a serious crime entitling petitioner to a jury trial. The Court said:

> "It is doubtless true that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision and should not be subject to the Fourteenth Amendment jury trial requirement here applied to the States. Crimes carrying possible penalties up to six months do not require a jury trial if they otherwise qualify as petty offenses, . . . But the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not and may in itself, if severe enough, subject the trial to the mandates of the Sixth Amendment."

In Bloom the Court repeated that the guarantees of jury trial found in Article III and the Sixth Amendment do not apply to petty offenses and that

> ". . . criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved."

The Court went on to say that where, as in Illinois, the legislature has not expressed a judgment as to the seriousness of an offense by fixing its maximum penalty, the Court would look at the actual penalty to determine the seriousness of the offense. It then found that the sentence of two years imprisonment imposed upon Bloom compelled the classification of his offense as a serious one. We have no statutory maximum penalty for criminal contempt in Maine. Neither Duncan nor Bloom fixed the exact line between petty and serious offenses but we find no suggestion in either opinion that the imposition of such a penalty as petitioner received here would require jury trial for criminal contempt.

REGULARITY OR PROCEEDINGS - DISQUALIFICATION OF OFFENDED JUSTICE

Petitioner relies on M. R. Crim. P. Rule 42 (b) which reads in part:

> "A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. . . . The person charged is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a justice, that justice is disqualified from presiding at the trial or hearing except with the defendant's consent. . . ."

Rule 42 (b) expressly excepts from this requirement the action of a justice for contempts occurring in the justice's presence. Neither our Rule 42 (a) nor the Federal Rule from which ours was adopted disqualifies the Presiding Justice from dealing with contempts committed in open court in

offending the orderliness of the proceedings, also inpugns the integrity of the Justice. The need for summary action plus the advantage of the presiding justice's first hand observation of the offending actions and their background must be balanced against the danger that personal resentment may enter into the Justice's evaluation of the incident.

In Cooke v. United States, 267 U.S. 517, 45 S. Ct. 290, 69 L. Ed. 767 (1925) the United States Supreme Court, examining an occurrence involving a Rule 42 (a) contempt, announced its approval of procedure under which the offended justice requests that the matter be heard before another justice, although the language of the Rule does not provide for it. The Court said:

> "All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place."

In Offutt v. United States, 348 U.S. 11, 75 S. Ct. 11, 99 L. Ed. 11 (1954), cited by the petitioner, the Court dealt with a 42 (a) contempt in which the presiding justice became involved personally to an unusual extent in bitter interchange of remarks with counsel.

> "The record discloses not a rare flare-up, not a show of evanscent irritation — a modicum of which temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. There was an intermittently continuous wrangle on an unedifying level between the two."

Offutt presented the exceptional case. The Court concluded that the extent of that judge's personal involvement should preclude his sitting in judgment upon that petitioner's conduct and that there "the application of the rule pronounced in Cooke v. United States is called for." The Court made clear its appreciation of the importance of summary action in in-court contempt proceedings and its appropriateness in all but unusual instances, saying:

> "We do not mean to imprison the discretion of judges within rigid mechanical rules. The nature of the problem excludes it."

Although our Rule 42 (a) does not require an offended justice to refer an alleged in-court contempt to another justice for hearing, we agree with the wisdom of the Cooke rule that he may do so. 17 Am. Jur. 2d, Contempt, Sec. 85. Our examination of the record in Doughty v. Anderson convinces us that the facts in the present case did not compel such a reference.

DUE PROCESS - REGULARITY OF PROCEEDINGS - ALLOCUTION

In the courtroom on the morning of July 7th the Presiding Justice ordered a mistrial in the case of Doughty v. Anderson and explained to the jurors his reason for doing so. He then addressed the petitioner stating his reasons for concluding that the petitioner's conduct was contemptuous and could not go unpunished.

Petitioner calls our attention to M. R. Crim. P. Rule 32 (a) which reads, in part:

> ". . . Before imposing sentence the court shall address the defendant personally and ask him if he desires to be heard prior to the imposition of sentence. The defendant may be heard personally or by counsel or both. Failure of the court to so address the defendant shall not constitute grounds for relief under Rule 35 (b) of these rules, unless the defendant shows that he has been prejudiced thereby."

Although this matter must go back for re-sentence where he will doubtless be offered opportunity for allocution this issue merits brief discussion. While the type of offense of which the petitioner was adjudged to be guilty is classified as criminal contempt committed in the presence of the Court, it seems clear that not all the procedural rules relating to the ordinary criminal offense are applicable. It is an offense sui generis. Cheff v. Schnachenberg, supra. For example, there is no right to notice, a written charge, hearing, and to present witnesses. However, more desirable practice would permit allocution in open court before sentence.

We do not find that petitioner was prejudiced. Counsel met with the Justice in chambers before going into Court the morning of July 7th. There petitioner urged upon the Court that a mistrial should be ordered to protect his client from the effects of his conduct. He said, during their discussion:

> "I am responsible for it, there is no question about that. You may deal with me any way you should, I'm willing to accept it but I don't think my client should be penalized."
>
> *****
>
> "I regret that incident yesterday and again I say I'm willing to accept whatever you feel I deserve."
>
> *****
>
> "I don't feel instructions from the Court could correct the animosity that they [the jurors] must feel toward me."
>
> *****
>
> "I regret having said that."

This discussion between counsel and Court in chambers was an extended one. In our view the petitioner was fully heard in chambers, on the record, and there was no requirement that he be heard again in the courtroom. He had in effect acknowledged the contempt and expressed his regrets and he had indicated that he was willing to accept whatever punishment the Court felt it should give. Immediately after sentence petitioner was given an opportunity to speak and he did so at length acknowledging his bad conduct and offering his apologies to both the jury and the Court. Petitioner then requested permission to speak to the Court in chambers and there sought unsuccessfully to purge himself of the confinement part of the sentence. In our view the petitioner had adequate opportunity to be heard and was not prejudiced.

Petitioner also argues that the Presiding Justice's remarks in chambers following sentence demonstrates that he was prejudiced and that he considered matters not of his personal knowledge in arriving at his judgment of contempt.

> "MR. ALEXANDER: Judge, I openly ask you if there is any way I can perhaps purge myself of this confinement? It obviously will work its hardship in terms of, you know, my practice and that sort of thing.
>
> "THE COURT: I'm afraid not, Grover. I am not very proud of myself for what I have done and it's the most difficult thing I have had to do in my life. I have made up my mind this is the only way I could bring to your attention what I think you have done. We have had some experience before but I have never had occasion to get upset. But I'm not the only one, and without attempting to justify anything I just say to you that your reputation with all of the judges, or most of the judges in this particular area makes this no particular surprise. I mean, I think you have had it coming.

"MR. ALEXANDER: You really do.

"THE COURT: If you didn't have it coming I wouldn't have done it to you."

The accusation which the petitioner made in open court was clearly contemptuous and we see nothing in the quoted remarks which suggests to us that the Justice found it so because he was already prejudiced against the petitioner.

ABSENCE OF MITTIMUS

At the time the petitioner surrendered himself to the Sheriff on the afternoon of July 7th there was not in existence any written order of commitment or mittimus and none was prepared by the committing Justice until after petitioner had been released on bail pending his hearing on habeas corpus. Petitioner takes nothing by this point. There was no loss of jurisdiction by the Court. The record shows the Judge orally ordered the commitment and the order was correctly carried out.

> "It is the judgment of the Court which authorizes detention, The mittimus is the evidence of the officer's authority. . . . The judgment is the real thing, the precept is not. The important question on habeas corpus is, is the prisoner in the custody where the judgment commanded him to be put, and not how he was taken into custody." Wallace v. White, 115 Me. 513, 521, 99 A. 452 (1916). See also Stern v. Chandler, supra.

DUE PROCESS - RULE 42 (a)

Petitioner asserts that he has been denied due process of law because of the failure of the committing court to comply with what petitioner

argues is required procedure.

M. R. Crim. P., Rule 42 (a), provides:

> "(a) Summary Disposition. A criminal contempt may be punished summarily if the justice certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the justice and entered of record."

Section (b) states that all other contempts shall be determined only after notice and hearing. The Justice in this case made no certificate as such. He prepared an order reciting that the petitioner had "been adjudged in contempt of this court by his conduct in open court in the presence of this Court and Jury", stating the punishment which had been verbally imposed and ordering petitioner's commitment to the custody of the Sheriff.

The purpose of Rule 42 (a) is to present to a reviewing court a full and clear statement of the facts out of which the contempt arose so that that court may determine whether the action of the committing court was within its jurisdiction and whether its action was just or arbitrary. People v. Longhram, 2 Ill. 2d 258, 118 N.E. 2d 310 (1954); In re: Rotwein, 291 N.Y. 116, 51 N.E. 2d 669 (1943); People v. Tavernier, 384 Ill. 388, 51 N.E. 2d 528 (1943); Widger v. United States, 244 F. 2d 103 (1957). Here the order of the Presiding Justice states his conclusion but not the facts upon which his conclusion was based.

Although the record in this case includes the transcript of the entire proceedings in Doughty v. Anderson, in the trial of which case petitioner made the accusation of prejudice, which we have considered and found to

be contemptuous, together with the discussion between counsel and the Court in chambers and the proceedings in the courtroom during which petitioner was adjudged to be in contempt and was sentenced, we can only infer that this accusation was the basis – and the only basis – of the judgment of the Presiding Justice.

We believe that due process necessitates a filing of the certificate referred to in Rule 42 (a). The certificate need not be filed immediately, nor before sentence in every case, but only the filing of the certificate can establish a record of what facts the Justice found to be contemptuous and the basis for the sentence imposed.

We conclude that the matter must go back to the Superior Court where the same Justice shall file the required certificate and re-sentence petitioner.

Appeal sustained. Case ordered remanded to the Superior Court for Cumberland County where the Justice shall file the certificate provided for in M. R. Crim. P. Rule 42 (a), and, upon notice to petitioner, shall have him brought before the same Justice in that Court for sentence.

Tapley, J. - did not sit.

Dufresne, J. - did not sit.

Date Opinion Filed
October 17, 1969

Reporter of Decisions
Docket No. 531
Law Docket No. 356

STATE OF MAINE

vs.

GROVER G. ALEXANDER

DUFRESNE, J.

On July 7, 1967 Grover G. Alexander, an attorney-at law, was summarily adjudged guilty of criminal contempt for disrespectful, defiant and insolent conduct in the course of a civil trial in which he represented the plaintiff. He was sentenced to imprisonment in the county jail for the term of 5 days and ordered to pay a fine of $500. Surrendering himself to the Sheriff, Alexander at the same time filed a petition for the writ of habeas corpus before a Justice of this Court who issued the writ and ordered a hearing thereon. From the subsequent dismissal of the writ, an appeal was taken to this Court. Alexander v. Sharpe, 1968, Me., 245 A.2d 279. Although the appellant had erroneously sought appellate relief from the contempt proceedings through habeas corpus and could have been summarily refused consideration for such error, this Court nevertheless proceeded to grant the requested review, treating the case as though the appellant had properly appealed from the con-

Our Court, in its opinion, affirmed the lower court's finding of guilt as it stated at page 283 thereof that "[p]etitioner's accusation of prejudice [against the presiding justice] was clearly an act of contempt of court." However, due to the lower court's failure to comply with the requirements of Rule 42 (a), M.R.Crim.P., the appeal was sustained and the case was ordered remanded to the Superior Court for Cumberland County "where the Justice below shall file the certificate provided for in M.R.Crim.P. Rule 42 (a), and, upon notice to petitioner, shall have him brought before the same Justice in that Court for sentence."

In compliance with the mandate, the justice below filed the following certificate on August 29, 1968;

"STATE OF MAINE

Cumberland, ss Superior Court

In Re: Grover G. Alexander
Defendant in Contempt

I hereby certify that I was the Presiding Justice at a Term of our Superior Court begun and held at Portland, within and for the County of Cumberland on the first Tuesday of June A.D. 1967, and that on July 6, 1967, at a session of said Court, during the trial of the civil actions of Edison A. Doughty, Jr. and Edison A. Doughty, Sr. vs. Oscar L. Anderson, civil docket numbers 67-230 and 67-231, at a time in the examination of the witness Richard L. Johnson, in open Court, in the presence of the Court and the Jury hearing the case, Grover G. Alexander, Esq., counsel for the Plaintiffs, made the following statements and conducted himself in the following manner, to wit:

He accused the Presiding Justice of being prej-

> Almost immediately before making the above statement, at a time when the Presiding Justice was speaking and admonishing Plaintiffs' counsel to be orderly, the said Grover G. Alexander, Esq., standing directly before the bench, continued to speak in a tone of voice and manner both rude and disrespectful, and belligerently shook his finger at the Court while continuing to address the Court, refusing to heed the Court's admonition.
>
> I do further certify that the foregoing conduct and language of Grover G. Alexander, Esq. was committed in open Court, in the presence of the Presiding Justice and that it was seen and heard by me as such Presiding Justice, and was also seen and heard by the Jury selected to serve as jurors in the cases and sitting in the jury box.
>
> And I do further certify that on July 7, 1967, I found the said Grover G. Alexander, Esq. guilty of contempt of Court on the basis of the language and conduct of the said Grover G. Alexander, Esq. as specifically set forth above, which language and conduct I found contemptuous of the Court, degrading to the administration of justice and disrupting to the orderly procedure of the Court.
>
> Dated at Portland, Maine this twenty-ninth day of August 1968.
>
> /s/ [Presiding Justice]
> Justice, Superior Court "

Pursuant to the suggestion of this Court at page 286 of its opinion, the appellant was offered before resentence opportunity for allocution, a right which he fully exercised. The presiding justice again condemned Alexander to imprisonment in the county jail for the term of 5 days and in addition thereto to pay a fine of $500. An appeal to this Court was filed forthwith and execution of the sentence was stayed pending its determination. Prior

to perfection of his appeal appellant on September 6, 1968 made a motion before the justice below for a judgment of acquittal and, in the alternative, for a new trial on the grounds that his constitutional rights of due process and to jury trial had been violated, points of grievances which he had fully developed in his previous appeal and which have been decided against him by this Court. Alexander v. Sharpe, supra. These motions were dismissed by the presiding justice for want of jurisdiction. The appellant renews in his points on appeal all these previously considered grievances of alleged constitutional dimension underlying his motion for acquittal or for new trial, and in addition thereto claims error below for the following reasons:

> "9. The present conviction and sentence is barred by reason that the appellant has been formerly placed in jeopardy for the same alleged offense."
>
> "12. The inclusion in the present record of a certificate wherein conduct on the part of the appellant is alleged outside of the reported record, and the denial of the right of appellant to produce contrary evidence by way of a new trial or otherwise deprives appellant of due process as provided by the State and Federal Constitutions as hereinbefore set forth."
>
> "13. The Court erred in dismissing Appellant's Motions for acquittal, New Trial and otherwise."
>
> "14. The punishment is harsh and excessive and is prohibited by State and Federal Constitutions."

The remand from this Court was clear and unambiguous; it con-

v. Sharpe, supra, indicated this Court's single concern which arose from the lower court's non-compliance with the requirements of Rule 42 (a), M.R.Crim.P. We pointed out that without the justice's certificate we could only infer that the proffered accusation of prejudice against the presiding justice exemplified in the record on appeal was the basis -and the only basis- of the judgment and sentence. Our mandate to the Superior Court permitted it to resume jurisdiction of the case but with specific instructions limiting its action therein to the filing of the required certificate and the resentence of the appellant. We may assert anew that "[t]he purpose of Rule 42 (a) is to present to a reviewing court a full and clear statement of the facts out of which the contempt arose so that that court may determine whether the action of the committing court was within its jurisdiction and whether its action was just or arbitrary." Alexander v. Sharpe, supra, at page 288. This Court concluded that a person's right of appeal from a conviction of contempt in summary proceedings necessitates as a matter of due process that all the essential facts supporting the finding of guilt be extended in written certificate as required by Rule 42 (a), M.R.Crim.P., so that appellate review of the lower court action may be meaningful. Conviction should not rest on presumptions or inferences, nor on facts which did not occur in the presence of the court. The remand for the filing of the certificate and for resentence did not set aside the lower court's adjudication of

appellant's guilt of contempt. This Court has the power and authority to open the penalty aspect of the judgment without affecting the finality of the adjudication of guilt. The presiding justice has now strictly complied with the plain terms of this Court's mandate. He could not vary it, nor examine it for any other purpose than its execution. He could not give the appellant any other or further relief. Sibbald v. United States, 1838, 12 Peters 488, 9 L.Ed. 1167. Our Court has so stated the rule in civil cases. See, Whitney v. Johnston, 1904, 99 Me. 220, 58 A. 1027; Simpson v. Richmond Worsted Spinning Co., 1929, 128 Me. 344, 147 A. 426. A like rule is applicable in criminal cases. United States v. Howe, 1922, 2d Cir., 280 F. 815. See, State v. Cole, 1923, 123 Me. 340, 122 A. 871; In re Hume, 132 Me. 102, 167 A. 79.

This Court's mandate finally ended the case so far as the adjudication of guilt was concerned and the lower court's jurisdiction was limited to the specific stated purposes expressed in the remanding order. Where from its terms no intent can be discerned on the part of this Court to vacate the lower court's adjudication of guilt of contempt to permit a new finding in the light of the filing of the certificate, the scope of the instant appeal from the judgment of resentence must be limited to matters arising in connection with the second sentencing and the appellant's motion for acquittal or, in the alternative, for a new trial was not jurisdic-

United States, 1936, 8th Cir., 86 F.2d 79.

Appellant objects to the lower court's description in the certificate of counsel's conduct outside of the printed record on appeal which, he says, influenced the presiding justice in meting out the particular sentence which he gave him. This objection is without merit. The purpose of the certificate under Rule 42 (a), M.R.Crim.P., is precisely to get as full a picture as words can portray of the contemptuous conduct. The stenographic record will not pick up such elements of in-court misbehavior as rude and disrespectful tone of voice or manner of address, nor the shaking of one's finger at the court in a belligerent way. The complete depiction of the court-room scene must be left to the justice's ability to reflect the same in his certificate and its reliability must be placed on his fairness and objectivity. The appellant has no more right to controvert the truth of that phase of the recited facts in the present posture of the case than he did at the time of the adjudication of his guilt which led to his first appeal. Stern, Pet'r. v. Chandler, 1957, 153 Me. 62, 71, 134 A.2d 550, 555. Furthermore, the presiding justice had the right to take the whole occurrence including counsel's vocal and gesticulative insolent demeanor into consideration when inflicting punishment and a full description of the entire scene in the certificate was necessary for a proper appellate evaluation of the sentence.

of his constitutional rights. He first claims that the resentencing violated the double jeopardy clause of Article I, § 8 of the Constitution of Maine, which provides that "[n]o person, for the same offence, shall be twice put in jeopardy of life or limb."

Our Court has ruled that a defendant, after a mistrial is ordered upon his motion or with his consent, can be tried anew upon the same charge and sentenced thereon and that a claim of constitutional double jeopardy does not lie to avoid the same. Clukey v. State of Maine, 1964, 160 Me. 198, 202 A.2d 6. In the instant case, the appellant instituted habeas corpus proceedings, considered by this Court in the nature of an appeal from the judgment of conviction of criminal contempt and from the sentence imposed thereon. The reversal of appellant's first sentence at his request on the ground of non-compliance by the court with the requirements of Rule 42 (a), M.R.Crim.P., is no bar to resentencing upon any claim of constitutional prohibition against double jeopardy.

It is the general rule that the resentencing of a prisoner duly convicted of crime, who has obtained his discharge from the sentence either on direct appeal or in habeas corpus proceedings, is not subject to the objection that he is put in jeopardy twice for the same offense. 22 C.J.S., Criminal Law, § 273, p. 706, § 267, p. 687; 21 Am. Jur.2d, Criminal Law, §§ 209, 210 ; Allen v. State, 1954, 260 Ala. 324, 70 So.2d 644; Northcott v. Hand, 1960,

Alexander's last objection raises the propriety of his sentence to imprisonment in the county jail for 5 days and to pay a fine of $500. He contends that such punishment under the recorded circumstances of the instant case was excessive and in violation of the constitutional prohibitions against cruel or unusual punishment. Constitution of Maine, Art. I, § 9; Constitution of the United States, Amendment VIII.

Punishment for criminal contempt is within the sound discretion of the sentencing court and in the absence of an abuse thereof it cannot be disturbed on appeal. Keyes v. United States, 1963, 9th Cir., 314 F.2d 123.

It is a precept of fundamental criminal justice that punishment for crime should be graduated and proportioned to the offense committed. Weems v. United States, 1909, 217 U.S. 349, 367. In contempt the penalty imposed should bear some reasonable relation to the nature and gravity of the contumacious conduct. United States v. Conole, 1966, 3rd Cir., 365 F.2d 306, cert. den. 87 S.Ct. 743, 385 U.S. 1025, 17 L.Ed.2d 673. The seriousness of the consequences of the contemptuous behavior, the public interest in supporting judicial power to maintain order and decorum in the courts of justice and adequate deterrence of future defiance of judicial authority by the appellant and others are all matters for the sentencing judge to take into consideration in his exercise of a sound

that the sentence under appeal was well within permissible limits of sound judicial discretion and dispels any possible claim of abuse.

The appellant's conduct in open court before the jury was well beyond the concept of mere overzealousness in legal advocacy. The court-room scene as reproduced by the record and the justice's certificate reveals a deliberate and blatant disrespect for the court strategically designed to delude the jury into the erroneous impression that the court was prejudiced against counsel and his client so as to create sympathy for his cause. Such reprehensible conduct necessitated the declaration of a mistrial in the immediate case and resulted in undue expense to the public treasury. The reference sanction, consisting of imprisonment in the county jail for a term of 5 days and payment of a fine in the amount of $500 and imposed upon an officer of the court for conduct of great demoralizing effect on the authority of the court before the jury and the public, does not denote such punitive severity as to shock our respective or collective consciences and by no means constitutes the infliction of cruel and unusual punishment or the imposition of excessive fine within the constitutional prohibition of either the State or Federal Constitution. In re Osborne, 1965, 9th Cir., 344 F.2d 611 (10 days); United States v. Schiffer, 1965, 6th Cir., 351 F.2d 91 (60 days).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, A.D. 1970, copies of the Petition for the Writ of Certiorari was mailed, postage prepaid,

to: JOHN W. BENOIT
ASSISTANT ATTORNEY GENERAL
STATE HOUSE
AUGUSTA, MAINE
Counsel for Respondents

I further certify that all parties required to be served, have been served.

William A. Mann
308 Colorado Building
Washington, D.C.
Counsel for Petitioner

January 15th, 1970